

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, MAY 14, 2010

CLERK'S OFFICE

2010 MAY 14 P 4:12

JOINT PETITION CONTROL

JOINT PETITION OF

RAPPAHANNOCK ELECTRIC COOPERATIVE,
SHENANDOAH VALLEY ELECTRIC COOPERATIVE,

and

CASE NO. PUE-2009-00101

THE POTOMAC EDISON COMPANY
D/B/A ALLEGHENY POWER

For approval of the purchase and sale
of service territory and facilities,
for the issuance of, and cancellation of,
certificates of public convenience
and necessity, and for approval of special,
transitional, rate schedules

ORDER

On September 15, 2009, Rappahannock Electric Cooperative ("REC") and Shenandoah Valley Electric Cooperative ("SVEC") (collectively, "Cooperatives"), and The Potomac Edison Company d/b/a Allegheny Power ("Potomac Edison") (collectively, "Joint Petitioners") filed a joint petition and application ("Joint Petition") with the State Corporation Commission ("Commission") pursuant to §§ 56-89, 56-90, 56-265.2, and 56-265.3 of the Code of Virginia ("Code"). The Joint Petitioners request as follows:

(a) approve a transaction that will result in the sale of Potomac Edison's electric distribution facilities located in its Virginia service territory to the Cooperatives; (b) issue to the Cooperatives certificates of public convenience and necessity for the acquisition of facilities and to furnish electric service in Potomac Edison's current Virginia retail distribution service territory; (c) cancel Potomac Edison's certificates of public convenience and necessity to provide electricity at retail in Virginia; (d) issue to Potomac Edison a certificate of public convenience and necessity authorizing it to operate transmission lines and facilities in the counties in which it currently provides such services; and (e) grant

such further approvals and relief as are requested in this Joint Petition and Joint Application; and (f) grant such further relief as may be appropriate.¹

Potomac Edison is a Virginia public service company that provides retail electric service to approximately 102,000 customers in northwestern Virginia. REC and SVEC are both not-for-profit electric cooperatives owned by, and operated for the benefit of, their member consumers. REC has approximately 104,000 customers in sixteen counties. SVEC has approximately 39,000 customers in Augusta, Rockingham, and Shenandoah Counties.

The Joint Petitioners have entered into two separate asset purchase agreements that would, if approved by the Commission, confer on the Cooperatives the rights and obligations to provide retail electric utility service in all of Potomac Edison's current Virginia service territory, transfer Potomac Edison's Virginia distribution facilities to the Cooperatives, and release Potomac Edison from its rights and obligations to provide retail utility service in the Commonwealth.

Specifically, REC would purchase Potomac Edison's distribution facilities in Fauquier, Rappahannock, Culpeper, Orange, Madison, Greene, Albemarle, and parts of Clarke, Frederick, Page, Shenandoah, and Warren Counties ("new REC territory") and would serve Potomac Edison's current customers in the new REC territory. SVEC would purchase Potomac Edison's distribution facilities in Shenandoah, Page, Highland, and parts of Frederick, Clarke, and Warren Counties, as well as all of the City of Winchester ("new SVEC territory") and would serve Potomac Edison's current customers in the new SVEC territory. Neither Cooperative proposes to acquire any of Potomac Edison's transmission facilities.

¹ Joint Petition at 60-61.

The estimated purchase price in the Joint Petition for the distribution facilities and other associated attributes of retail service in Virginia ("Virginia Assets") is approximately \$350 million in total. REC is proposing to purchase Potomac Edison's Virginia Assets in the new REC territory for approximately \$183 million, and SVEC is proposing to purchase Potomac Edison's Virginia Assets in the new SVEC territory for approximately \$167 million, subject in each transaction to post-closing adjustments to true-up the net book value of the acquired assets, customer deposits, and accounts receivable.

The Cooperatives have agreed to be bound by the rates and charges set out in the Commission's Order dated November 26, 2008, in Case No. PUE-2008-00033 and the Stipulation attached to that Order, with respect to the Virginia Assets, for the time periods set forth therein.² Thus, the Joint Petitioners maintain that the transaction will have no immediate impact on the rates of Potomac Edison's Virginia customers who will be transferred to the Cooperatives. To assist in the fulfillment of this obligation, Old Dominion Electric Cooperative ("ODEC") would assume certain contractual obligations to serve Potomac Edison's former retail customers in Virginia through June 30, 2011. After June 30, 2011, it is proposed that the process of setting rates for the former Potomac Edison customers would be the same process applicable to the Cooperatives' current customers.

The Cooperatives would also assume most post-closing liabilities, as well as some pre-closing liabilities, including certain regulatory liabilities; limited liabilities relating to the remediation of hazardous substances; liabilities related to customer deposits and unearned pole attachment rental revenue; and cost of removal obligations associated with the Virginia Assets.

² *Application of The Potomac Edison Company d/b/a Allegheny Power, For an increase in its electric rates pursuant to Va. Code §§ 56-249.6 and 56-582 and, alternatively, request to modify Memorandum of Understanding and Order in Case No. PUE-2000-00280, Case No. PUE-2008-00033 (Nov. 26, 2008).*

Potomac Edison would remain liable for all liabilities related to the Virginia Assets not specifically assumed by the Cooperatives. The asset purchase agreements provide for customary representations and warranties, covenants, and indemnifications.

The Joint Petitioners assert that, in compliance with § 56-90 of the Code, the transfer of the Virginia Assets to the Cooperatives will neither impair nor jeopardize adequate service to the public at just and reasonable rates. The Joint Petitioners further assert that, in compliance with § 56-265.2 of the Code, the allotment of the current Potomac Edison Virginia service territory to REC and SVEC is in the public interest, as it will provide a number of benefits that will improve the economics, reliability, and operation and maintenance of the distribution facilities in Potomac Edison's current Virginia service territory, and will result in the continued provision of adequate, safe, and reliable service at just and reasonable rates.

On September 30, 2009, REC and SVEC filed for approval of special rate schedules pursuant to § 56-235.2 of the Code. The Cooperatives requested that the Commission grant them approval to implement transitional rate schedules for Potomac Edison's current customers in the new REC territory and in the new SVEC territory should the Joint Petition be granted. As is mentioned above, these specialized, transitional rate schedules are consistent with the rates and charges set forth in the November 26, 2008 Order in Case No. PUE-2008-00033, and the Stipulation attached to that Order. Thus, these requests for approval of special, transitional rate schedules would not result in any immediate changes to the rates and charges assessed to the former customers of Potomac Edison. Nor would these filings result in any immediate changes in the rate schedules applicable to the Cooperative's current member customers.

The Cooperatives also requested that the September 30, 2009 filings be coordinated with all other petitions or applications related to the transaction that, if approved, would result in the

sale of Potomac Edison's distribution facilities located in its Virginia service territory to REC and SVEC.

On October 9, 2009, the Commission issued an Order for Notice and Hearing that established the procedural requirements for this matter, required the Joint Petitioners to publish notice, permitted the filing of written and electronic public comments, and scheduled a public evidentiary hearing. The Commission also deemed the Cooperatives' September 30, 2009 filings as supplemental filings to, and as part of, the Joint Petition.³

The following filed notices of participation in this case: Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel"); Board of Supervisors of Frederick County ("Frederick County"); City of Winchester;⁴ and Bear Island Paper Company. On February 18, 2010, a Notice of Participation and Motion for Leave to File Out of Time was filed by Comcast of Colorado/Pennsylvania/West Virginia, LLC, Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC, and Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC (collectively, "Comcast").⁵

The Commission convened the public evidentiary hearing on March 2, 3, 4, 5, and 8, 2010. The following participated in the hearing: Joint Petitioners; Frederick County; Consumer Counsel; and Commission Staff ("Staff"). By Orders dated April 2 and 20, 2010, the Commission delayed the filing of post-hearing briefs at the request of the participants in this case.

³ In addition, on April 7, 2010, REC and SVEC filed Revised Special Rate Tariffs applicable to the Cooperatives' respective Levelized Purchased Power Factor schedules.

⁴ The City of Winchester subsequently withdrew its notice of participation.

⁵ The Commission subsequently denied Comcast's motion for leave to file a notice of participation out of time. Tr. 15-31. Comcast, however, also submitted written comments and presented a public witness at the evidentiary hearing.

On April 27, 2010, the Joint Petitioners filed a Motion to Accept Stipulation and for Delay of Filing of Post-Hearing Briefs ("Motion"). The Joint Petitioners state that: (1) Potomac Edison, REC, SVEC, Frederick County, and Consumer Counsel "have jointly executed a Stipulation [('Stipulation')]" (Attachment A to this Motion) that will mitigate the projected rate increases to the former Potomac Edison customers as well as the other customers of the Cooperatives;" (2) "Consumer Counsel and Frederick County have authorized the Joint Petitioners to state that they support the Commission's granting of this Motion and approval of the Stipulation;" (3) "Staff takes no position on the Stipulation or Motion insofar as it relates to the Stipulation, but supports an indefinite delay in the filing date of the briefs to allow the Commission to consider the Stipulation;" and (4) the Joint Petitioners "respectfully request that the Commission accept the Stipulation and enter an Order adopting its terms, delaying indefinitely the submission of the post hearing briefs, and approving the Joint Petition."⁶

The Stipulation includes, among other things, the following provisions: (1) "Potomac Edison agrees to contribute \$27,500,000 to reduce the rate impacts on the . . . power supply costs [for the former customers of Potomac Edison ("Transitioning Customers')];" (2) the "Cooperatives agree . . . to defer collectively the collection of \$5,000,000 in purchased power costs from the Transitioning Customers for the period of July 1, 2012 through June 30, 2013 with such deferral to be collected from the Transitioning Customers in the period of July 1, 2013 through June 30, 2014;" (3) "Potomac Edison agrees to contribute an additional \$35,000,000 to reduce the acquisition premium by this amount, which will have the effect of reducing base rates for all customers of the Cooperatives compared to base rates without such reduced acquisition premium;" (4) the "Cooperatives agree that there is to be no increase in base rates for

⁶ Motion at 2-3.

Transitioning Customers before July 1, 2014, and any such increase at that time will be only pursuant to a final order of the Commission upon conclusion of a base rate proceeding;" and (5) "the Cooperatives agree to limit any such proposed base rate increase to the Transitioning Customers' distribution rates in 2014[, 2015, and 2016] to an amount no greater than that which would result in a 5% increase in a typical 1,000 kWh per month Transitioning Customers' total bill."⁷

On April 28, 2010, the Commission issued an Order that suspended the filing of post-hearing briefs and scheduled a hearing to receive evidence on the Stipulation.

On May 3, 2010, the Commission held a hearing to receive evidence on the Stipulation.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that: (1) the Joint Petition is approved subject to the requirements set forth herein; and (2) if the Joint Petitioners do not accept the requirements set forth herein, the Joint Petition is denied.

Code of Virginia

Section 56-90 of the Code states in part as follows:

If and when the Commission, with or without hearing, shall be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition, the Commission shall make such order in the premises as it may deem proper and the circumstances require, and thereupon it shall be lawful to do the things provided for in such order,

Section 56-265.2 A of the Code states in part as follows:

It shall be unlawful for any public utility to construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility service, except ordinary extensions or improvements in the usual course of business, without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege.

⁷ Stipulation at 3-4.

Section 56-265.3 B of the Code states as follows:

On initial application by any company, the Commission, after formal or informal hearing upon such notice to the public as the Commission may prescribe, may, by issuance of a certificate of convenience and necessity, allot territory for development of public utility service by the applicant if the Commission finds such action in the public interest.

Joint Petition

We conclude that the Joint Petition, as originally filed, does not satisfy the statutory standards above. The original proposal required the Cooperatives to pay an acquisition premium of more than \$120 million. Unlike investor-owned utilities, the Cooperatives do not have shareholders that could absorb all or part of an acquisition premium. In addition, the original proposal would have resulted in a significant and unreasonable rate impact on Transitioning Customers.

Certain aspects contained in the Stipulation address these issues to some degree. The Stipulation reduces the acquisition premium by \$35,000,000 and mitigates the rate impact on Transitioning Customers by: (i) reducing power supply costs by \$27,500,000; (ii) deferring collection of \$5,000,000 in purchased power costs; (iii) precluding a base rate increase prior to July 1, 2014; and (iv) providing other limits on rate increases. The Stipulation also provides for modifications to the governance structures of the Cooperatives' respective Boards of Directors to reflect the new REC and SVEC territories.

Based upon the record in this case, even with the reduced premium and limited mitigation of power supply costs, Transitioning Customers are likely to see rate increases in the future. If these customers remained with Potomac Edison, there is also a likelihood that rates would rise. The record shows that there is rate exposure to these customers under either scenario. However,

by approving the Joint Petition subject to the requirements set forth below, the Transitioning Customers will be significantly benefited in that they will no longer be served – as they would by Potomac Edison – at power supply prices that are subject solely to the vagaries of the wholesale market; rather, the Transitioning Customers will be served from a more diverse portfolio of assets via the Cooperatives' contractual relationship with ODEC.

Accordingly, we find that the Joint Petition, subject to the key requirements set forth below, satisfies the relevant statutory standards attendant to this case.⁸ The requirements set forth below (a) are based, in part, upon certain provisions in the Stipulation, and (b) include modifications and additional ratemaking requirements that are necessary to ensure that this transaction does not result in unintended and unreasonable rate impacts. Specifically, we conclude that the following requirements are necessary to find that approval herein is in the public interest and to be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized:

- 1) Potomac Edison shall contribute \$27,500,000 to reduce the rate impacts on the Transitioning Customers' power supply costs. This contribution will directly decrease the costs that the Cooperatives attribute to purchased power used to serve the Transitioning Customers by \$20,000,000 from July 1, 2011, through June 30, 2013, as set forth in the hearing in Exhibit 40, and by \$7,500,000 from July 1, 2014 through June 30, 2015. These savings will flow directly to the Transitioning Customers through a wholesale purchase power adjustment clause that the Cooperatives will maintain for the Transitioning Customers, which will be separate from such adjustments used for the other customers of the Cooperatives. To fund these reductions in rates to Transitioning Customers, Potomac Edison will pay to the Cooperatives \$17,500,000 on July 1, 2011, \$2,500,000 on

⁸ In addition, we find that the requirements requested by Comcast regarding pole attachment rates are not necessary in order for the Joint Petition, as modified by the Stipulation and subject to the additional requirements herein, to comply with the applicable statutory standards. *See, e.g.*, Tr. 16. For example: (1) we find that any potential impact on Comcast's Virginia consumers from possible changes in pole attachment rates is speculative; and (2) the Code provides that upon request by a telecommunications service provider or cable television system to a public utility, "both the public utility and the telecommunications service provider or cable television system shall negotiate in good faith to arrive at a mutually agreeable contract for attachments to the public utility's poles by the telecommunications service provider or cable television system." Tr. 16-30; Va. Code § 56-466.1 B.

July 1, 2012, and \$7,500,000 on July 1, 2014.⁹

- 2) The Cooperatives shall, as set forth in Exhibit 40, defer collectively the collection of \$5,000,000 in purchased power costs from the Transitioning Customers for the period of July 1, 2012, through June 30, 2013, with such deferral to be collected from Transitioning Customers in the period of July 1, 2013, through June 30, 2014.¹⁰
- 3) Potomac Edison shall contribute an additional \$35,000,000 to reduce the acquisition premium by this amount, which will have the effect of reducing base rates for all customers of the Cooperatives compared to base rates without such reduced acquisition premium.¹¹
- 4) There shall be no increase in base rates for Transitioning Customers before July 1, 2014, and any such increase at that time will be only pursuant to a final order of the Commission upon conclusion of a base rate proceeding.¹²
- 5) The Cooperatives shall limit any requested increase to Transitioning Customers' distribution rates to an amount no greater than that which would result in a 5% annual increase over the level of total rates in effect at the time of such request in a 1,000 kWh per month Transitioning Customer's total bill. This requirement shall apply through December 31, 2016. Nothing in this paragraph 5) shall be deemed a modification or waiver of the Cooperatives' and customers' responsibilities for wholesale power costs. Nothing in this paragraph 5) shall be deemed a waiver of the Cooperatives' ability to seek a determination from the Commission that emergency rate relief is warranted, as defined by § 56-245 of the Code.¹³
- 6) Upon the effective date of the transaction approved herein, the Cooperatives shall adopt governance structures as to their respective Boards of Directors as set forth in Exhibit 54 (as to REC) and Exhibit 52 (as to SVEC).¹⁴

⁹ Ex. 57 at 3 (Stipulation).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 4.

¹³ *See id.* at 4-5.

¹⁴ *Id.* at 5.

- 7) Potomac Edison and the Cooperatives shall amend their respective Asset Purchase Agreements consistent with this Order.¹⁵
- 8) Nothing in this Order shall limit the Commission's discretion or authority in establishing rates for Transitioning Customers and customers in the Cooperatives' existing territories. This includes, but is not limited to, rate design, cost allocation, and harmonization of rates – and does not require the Commission subsequently to approve any harmonization of rates.
- 9) The Cooperatives shall agree not to modify base rates without Commission approval. This requirement shall apply through December 31, 2019, and is applicable to both Transitioning Customers and customers in the Cooperatives' existing territories.

Finally, we note that public comments submitted in this case addressed, among other issues, (1) providing representation from the new REC and SVEC territories on the Cooperatives' respective Boards of Directors, and (2) mitigating rate increases to the Transitioning Customers. The requirements above address both of these concerns. Indeed, no locality has opposed the transaction we approve today, and affirmative support for this transaction was submitted by Frederick County,¹⁶ the City of Winchester,¹⁷ and the Highland County Board of Supervisors.¹⁸ Furthermore, Consumer Counsel similarly recommended approval of the Joint Petition as modified by the provisions of the Stipulation.¹⁹

Accordingly, IT IS HEREBY ORDERED THAT:

(1) The Joint Petition is approved subject to the requirements set forth herein.

(2) Within ten (10) days from the date of this Order, Potomac Edison, REC, and SVEC shall file a notice of acceptance with the Commission if the Joint Petitioners accept approval of

¹⁵ *Id.*

¹⁶ *See* Stipulation.

¹⁷ Tr. 35.

¹⁸ Comments submitted on January 28, 2010.

¹⁹ *See* Stipulation; *see also* Tr. 1034-1040.

the Joint Petition subject to the requirements set forth herein. Such notice of acceptance shall be (i) signed by counsel for each Joint Petitioner, and (ii) signed and verified by the president or any vice-president and the secretary or any assistant secretary for each Joint Petitioner. Upon the timely filing of such notice of acceptance, the Commission further orders as follows:

(a) Potomac Edison, REC, and SVEC are directed to comply with this Order.

(b) The certificates of public convenience and necessity previously issued to Potomac Edison, as listed in attached Appendix A, are cancelled.

(c) The new and revised certificates of public convenience and necessity, listed in the attached Appendix B, relating to REC's acquisition of Potomac Edison's utility facilities in Virginia and the provision of service in Potomac Edison's former territory, are issued to REC. Appropriate certificates and maps shall be issued by the Commission's Division of Energy Regulation and sent to REC.

(d) The new and revised certificates of public convenience and necessity, listed in the attached Appendix C, relating to SVEC's acquisition of Potomac Edison's utility facilities in Virginia and the provision of service in Potomac Edison's former territory, are issued to SVEC. Appropriate certificates and maps shall be issued by the Commission's Division of Energy Regulation and sent to SVEC.

(e) Within seven (7) days of consummation of the transactions approved herein, REC and SVEC shall file with the Clerk of the Commission a report of action providing the date the transactions took place.

(f) Within thirty (30) days of completing the transactions approved herein, subject to administrative extension by the Commission's Director of Public Utility

Accounting, REC and SVEC shall file reports with the Commission showing the accounting entries reflecting the respective transactions on the party's books.

(g) Within thirty (30) days of the date of this Order, REC and SVEC shall file with the Commission's Division of Energy Regulation tariffs to become effective upon consummation of the transaction approved herein.

(3) If the Joint Petitioners do not timely file the notice of acceptance referenced in (2), above, the Joint Petition is denied.

(4) This case is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Joanne Katsantonis, Esquire, and Edward L. Flippen, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030; Richard D. Gary, Esquire, and Noelle J. Coates, Esquire, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219; Anthony C. Williams, City Attorney, City of Winchester, 15 North Cameron Street, Winchester, Virginia 22601; Jeffrey P. Trout, Esquire, Allegheny Power, 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601; Cliona M. Robb, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia; Roderick B. Williams, Esquire, County of Frederick, 107 North Kent Street, Floor 3, Winchester, Virginia 22601; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and a copy shall be delivered to the Commission's Office of General Counsel and Divisions of Energy Regulation and Public Utility Accounting.

A True Copy
Teste:


Clerk of the
State Corporation Commission

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPENDIX A

E-A44	E-G46
E-A45	E-G47
E-B43	E-H33
E-B44	E-H34
E-B45	E-H41
E-B46	E-H42
E-C43	E-H43
E-C44	E-H44
E-C45	E-H45
E-C46	E-H46
E-C47	E-I33
E-C48	E-I34
E-D42	E-I35
E-D43	E-I41
E-D44	E-I42
E-D45	E-I43
E-D46	E-I44
E-D47	E-I45
E-D48	E-I46
E-E40	E-J32
E-E41	E-J33
E-E42	E-J34
E-E43	E-J35
E-E44	E-J41
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E-E46	E-J43
E-E47	E-J44
E-F43	E-J45
E-F44	E-J46
E-F45	E-K32
E-F46	E-K33
E-F47	E-K42
E-G42	E-K43
E-G43	E-K44
E-G44	E-K45
E-G45	E-L44

APPENDIX B

NEW

E-B45
E-C45
E-C46
E-C47
E-C48
E-D44
E-D45
E-D46
E-D47
E-D48
E-E44
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E-F44
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E-I42
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REVISED

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E-G45
E-G46
E-G47
E-H44
E-H45
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APPENDIX C

NEW

E-A44

E-A45

E-B43

E-B44

E-B45

E-B46

E-C43

E-C44

E-C45

E-C46

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REVISED

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E-J35